

## NEWPORT BEACH PLANNING COMMISSION MINUTES

11/08/2012

**NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 3300 Newport Boulevard**  
**Thursday, November 8, 2012**  
**REGULAR MEETING**  
**6:30 p.m.**

I. **CALL TO ORDER** – The meeting was called to order at 6:30 p.m.

II. **PLEDGE OF ALLEGIANCE** – Commissioner Ameri

III. **ROLL CALL**

PRESENT: Ameri, Brown, Hillgren, Kramer, Myers, Toerge, Tucker

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Community Development Deputy Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Fern Nueno, Associate Planner; Kay Sims, Assistant Planner; Javier S. Garcia, Senior Planner

IV. **PUBLIC COMMENTS**

Chair Toerge invited those interested in addressing the Commission on items not on the agenda, to do so at this time.

Jim Mosher commented on the Commission's power to do the people's work given to the Commission by the City Charter. He noted a recent approval of the City Charter and highlighted changes made. He noted that the Commission will no longer be required to make recommendations regarding Public Works projects for rebuilding of blighted areas in the City, to meet once per month or select a new Chair every year. He also addressed changes to the duties of the City Manager affecting the Commission.

There were no others wishing to address the Commission and Chair Toerge closed the Public Comments portion of the meeting.

V. **REQUEST FOR CONTINUANCES** - None

VI. **CONSENT ITEMS**

**ITEM NO. 1 MINUTES OF OCTOBER 4, 2012**

**Recommended Action:** Approve and file

Chair Toerge noted corrections to the minutes.

Interested parties were invited to address the Commission on this item. There was no response and public comments were closed.

**Motion** made by Vice Chair Hillgren and seconded by Commissioner Ameri, and carried 7 – 0, to approve the minutes of the Planning Commission meeting of October 4, 2012, Regular meeting, as amended.

## NEWPORT BEACH PLANNING COMMISSION MINUTES

11/08/2012

Commissioner Ameri addressed the issue of privacy and inquired about the possibility of placing a condition pending the future use of the adjacent property.

In response to an inquiry from Chair Toerge, Ms. Brandt reported that generally variances are not conditional upon changing circumstances.

Commissioner Brown reported visiting the site noting that nearby properties have walls that seem to exceed six feet.

Ms. Sims reported that there was one modification permit granted to a property across the street that was allowed up to eight feet and that others may have been granted before the annexation.

Commissioner Tucker felt that there should be a process in place to review the issues addressed in this variance if there were a future change in use of the adjoining properties in terms of future changes in land use.

Assistant City Attorney Leonie Mulvihill reported that conditioning a variance, depending on various uses, would result in the variance findings not being supportable. She addressed the purpose of a variance and stated that to condition a variance would be problematic and difficult. She stated that she does not recommend conditioning a variance.

Commissioner Ameri noted the ability to modify the structures, if needed, in the future and inquired regarding the possibility of addressing the issue as a Conditional Use Permit rather than a variance.

Commissioner Myers commented on the process.

Chair Toerge invited the applicant to address the Commission.

Masha Chizhik, representing the Applicants, referenced documentation negating the use of fill on the property. She provided a PowerPoint presentation explaining the rationale for modifying the wall and lattice during construction as opposed to requesting a variance initially. She addressed the original wall, the need to build up because of safety issues as well as privacy, views, location of neighboring structures in the side setbacks, and horse trail. Ms. Chizhik reported that when her family moved into the home, the adjacent structures were already there. She asked for privacy from views, smells and sounds from adjacent properties.

Gennady Chizhik, property owner, indicated that he does not want to create problems but is only asking for their privacy. He referenced documents regarding grade certification and noted that dirt was removed, not brought into the property. He stated that his neighbors loved the wall and it was built at his sole expense. He noted that his property is well-maintained. He asked that the Commission approve the variance request.

Interested parties were invited to address the Commission on this item.

Scott Grant, adjacent neighbor, expressed concerns that the wall and lattice were built without permits and that, because he is disabled, he is unable to maintain the hedge on his side of the property. He expressed concerns regarding his privacy and wondered about future maintenance of the hedges should the property owner choose to move in the future. He agreed with keeping the block wall and lattice but indicated that he does not want to maintain the hedge.

Marina Chizhik, Applicant, agreed with cutting the hedges but opposed removing the lattice and trimming the trees to the height of the lattice.

## NEWPORT BEACH PLANNING COMMISSION MINUTES

11/08/2012

Steve Sanders, owner of the property on the north side, reported that the property was graded and raised but that it was done by the owner previous to the Chizhik's. He expressed concerns regarding his privacy from the 35 foot height of the Chizhik home, as well as the process of not having prior notice of such a high structure allowed to be constructed on the property.

In response to an inquiry from Commissioner Tucker, Mr. Sanders reported he is not complaining about the fence.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

**Motion** made by Commissioner Ameri and seconded by Commissioner Kramer, to adopt Resolution No. 1896 approving Variance No. VA2012-005.

Vice Chair Hillgren indicated the he will not support the matter and felt that the issue may be resolved by neighbors working together.

Commissioner Brown questioned what would occur if the variance is not approved.

Ms. Brandt reported that if the variance is not granted, the applicant could appeal the decision through Council. Once a final determination is made and the variance is not granted, the property would need to be brought into compliance with the City's Municipal Code. She noted the need to enforce the Municipal Code.

Commissioner Brown expressed concerns regarding the process relative to the variance not being requested prior to construction of the wall. He stated that he is inclined to grant the variance.

Chair Toerge indicated that he drove through the area and saw many cases where walls and hedges exceeded the height of the subject site. He stated that he will support staff's recommendation as well as the motion.

In response to an inquiry from Commissioner Tucker, Commissioner Ameri reported that his motion supports approval of the variance as presented and proposed by staff.

Commissioner Tucker ~~questioned whether~~indicated he did not believe that this application presented a proper fact situation for granting a variance but this is the proper use for a variance and felt the request was reasonable as modified by staff and there was~~there is~~ no other mechanism for handling such a similar requests. He opposed ~~running~~ the variance running with the property in perpetuity.

Chair Toerge called for the question.

The motion carried 5 – 2 as follows.

AYES: Ameri, Brown, Kramer, Toerge and Tucker  
NOES: Hillgren and Myers  
ABSTENTIONS: None  
ABSENT (Excused): None

Ms. Brandt clarified that the motion includes reduction of the height of the hedge to the existing lattice work but that staff's recommendation also included conformance with the City's Traffic Safety Area as well as bringing the height of the wall in the front setback area to forty-two inches on the south property line.

## NEWPORT BEACH PLANNING COMMISSION MINUTES

11/08/2012

Dennis Halloran referenced recent actions by the Laguna Beach Planning Commission, reported experience with mixed-use areas and stated that Woody's has recently become a nightclub which is inappropriate in a mixed-use area. He agreed with the need to clearly specify use and closure of the outdoor dining area and encouraged the Commission to deny the application.

Norman Einhorn spoke in opposition to the application and noted that he has made many complaints throughout the years regarding the operation of Woody's. He stated that current laws are not being enforced and that they should not be rewarded. He asked that the Commission deny the application.

Christopher Rolfs spoke in opposition to the application and addressed noise related to Woody's Wharf. He thanked the Commission for making the neighborhood better, but felt that the situation has become worse throughout the years.

Joe Reiss expressed concerns that the owners of Woody's Wharf have operated the business while multiple violations have occurred. He spoke in opposition to the application and noted that the issue is one of quality of life. He encouraged the Commission to accept the recommendations from the Police Department and noted the high concentration of alcohol-related uses in the area. In addition, he addressed problems with parking and lack of parking and noise studies.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

In response to an inquiry from Chair Toerge, Mr. Garcia reported that Woody's Wharf has always been a restaurant.

In response to Vice Chair Hillgren's inquiry, Mr. Garcia addressed the possibility of putting a roof over the patio and the prohibition of placing additional structures across the lot line, without consolidating the lots. Mr. Garcia reported that the Code does not require noise or parking studies be submitted for this type of change since it is an existing use.

Commissioner Tucker inquired regarding the possibility of a "lot-tie agreement" temporary lot merger to allow placement of a patio cover structure. He stated that such an agreement would allow the lots to be treated as one while the patio cover was in place.

Ms. Brandt noted the two different Codes being considered including the State Building Code and the City's Municipal Code requirements. She addressed steps relative to certificates of compliance and the need to subdivide once conditions would change.

Commissioner Tucker noted that the noise issue is a Code Enforcement issue and did not think that it was an item for the Commission to approve or not approve. He commented that he would not support expanding the use to include on the issue of dancing nor and the operation of the patio beyond 11:00 p.m.

Mr. Garcia addressed allowances related to the current approval.

Community Development Deputy Directory Brenda Wisneski explained that the noise issue would be a Code Enforcement issue regardless of the Planning Commission's decisions.

Commissioner Tucker referenced the Police Department recommendations and questioned why staff would find that dancing would be acceptable.

Mr. Garcia addressed limitations of the use of outdoor dining and felt that allowing dancing would allow for private parties/receptions/fundraising events and that limiting the dancing to the interior would not impact the neighbors.